

REMARKS

The present Amendment is responsive to the Office Action dated January 22, 2009. Applicants submit a one-month extension of time herewith extending the period from April 22, 2009 up to and including May 22, 2009.

Claims 1-7, 9, 10, 12-15, 19 and 21-28 were rejected in the Action. Claims 3-7, 9, 10 and 12-15 were merely objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 1, 4, 9, 12 and 19 have been amended above, no claims have been added, and claim 3 has been cancelled herein. Therefore, claims 1, 2, 4-7, 9, 10, 12-15, 19, and 21-28 are pending in the present application. Support for the amended claims can be found in Applicants' originally filed disclosure. Thus, no new matter is added herein. Applicants set forth the following remarks in response to the Action.

In the Action, the Examiner asserted that Applicants have not complied with one or more conditions for receiving the benefit of an earlier filing date because no petition was filed with Applicants' late claim for priority. On November 12, 2008, Applicants submitted a Supplemental Amendment with an attached Application Data Sheet and a Request to Correct Filing Receipt. In the Supplemental Amendment, the first paragraph of the specification was revised to properly claim priority. Applicants point out that M.P.E.P. § 201.11(V)(A) states that a petition under 37 CFR 1.78(a)(3) and the surcharge is not required for correcting a timely submitted benefit claim when changing the relationship of the applications (e.g., changing from "continuation" or "divisional" to "continuation-in-part" or from "continuation-in-part" to "continuation" or "divisional"). Therefore, a petition is not necessary to correct relationship

(e.g., continuation to division) if the benefit claim to each of the applications were included in the specification upon filing of the application. As that is the case with the present application, Applicants respectfully assert that the current priority rejection is incorrect and should be withdrawn.

Further in the Action, claims 19 and 25-28 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully traverse this rejection. There are several paragraphs in the specification that describe in detail the relationship of the engagement of the angled perimeters of the baseplates and the angled faces of the manipulation tool in different surgical approach aspects or directions that may be taken by a surgeon during a surgical procedure using the claimed device. For instance, paragraphs [0083], [0140], and [0151], for example, of the specification state the following:

[0083] ...and in an anterior approach for the disc 160 (as shown in FIGS. 4k-n, showing the disc 160 being held by the inserter/impactor 400 as an example for of how the disc 160 can be held by either inserter/impactor 400,4000), 180a and 180d facing 420a (or 4200a and 4200d), 180b and 180e facing 420b (or 4200b and 4200e), and 180c and 180f facing 420c (or 4200c and 4200f).

[0140] ...Preferably, for an anterior approach, the wedge-shaped extension 4042 is designed and shaped to fit with its antero-lateral confronting surfaces (4200d,f and 4200a,c) tightly against the correspondingly antero-laterally facing surfaces (180d,f and 180a,c) of the disc 160, but such that its anterior confronting surfaces (4200e and 4200b) are slightly spaced from the anteriorly facing surfaces (180d and 180b) of the disc 160, when the disc is held by the inserter/impactor 4000.

[0151] ...For example, in a first anteriolateral approach for the trial 100,1000 (as shown in FIG. 4i as an example of how either trial 100,1000 can be

engaged by either inserter/impactor 400,4000), 120a,1200a and 120d,1200d not confronted, 120b,1200b and 120e,1200e facing 420a (or 4200a and 4200d), and 120c,1200c and 120f,1200f facing 420b (or 4200b and 4200e), and a first anteriolateral approach for the disc 160 (as shown in FIG. 4o as an example of the how the disc 160 can be engaged by either inserter/impactor 400,4000), 180a and 180d not confronted, 180b and 180e facing 420a (or 4200a and 4200d), and 180c and 180f facing 420b (or 4200b and 4200e). And, for example, in a second anteriolateral approach for the trial 100 (as shown in FIG. 4j as an example of how either trial 100,1000 can be engaged by either inserter/impactor 400,4000), 120a,1200a and 120d,1200d facing 420b (or 4200b and 4200e), 120b,1200b and 120e,1200e facing 420c (or 4200c and 4200f), and 120c,1200c and 120f,1200f not confronted, and a second anteriolateral approach for the disc 160 (as shown in FIG. 4p as an example of how the disc 160 can be engaged by either inserter/impactor 400,4000), 180a and 180d facing 420b (or 4200b and 4200e), 180b and 180e facing 420c (or 4200c and 4200f), and 180c and 180f not confronted.

In light of the above, Applicants respectfully submit that the recitation "at least three separate surgical approach aspects" in claim 19 is not vague and undefined as asserted by the Examiner. Figs. 4k-4p clearly show two sets of angled faces of the manipulation tool corresponding to the angled perimeters of the first and second baseplates such that when the distal end of the manipulation tool is engaged with the angled perimeters of the baseplates, movement of the baseplates relative to the distal end of the manipulation tool is limited by interference between the angled perimeter of the baseplates and the distal end of the manipulation tool in at least three separate surgical approach aspects. Specifically, Figs. 4l, 4o, and 4p each show an example of a different surgical approach aspect. Thus, in the drawings, and the written disclosure, there is a specific reference frame for one of ordinary skill in the art to understand that the angled faces of the manipulation tool correspond to the angled perimeters of the first and second

baseplates to define a surgical approach aspect, and the structure of the claimed apparatus and manipulation tool define at least three separate surgical approach aspects as claimed. In light of the foregoing, Applicants respectfully assert that the 112, second paragraph, rejections of pending claims 19, and 25-28 is overcome and the rejection should be withdrawn.

Further in the Action, the Examiner rejected claims 1, 2, 19, 21-23, 25-27 under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,821,298 to Jackson ("Jackson"), and claims 24 and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson. The Examiner also objected to claims 3-7, 9, 10, and 12-15 as being dependent upon a rejected base claim, but allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Independent claims 1 and 19 have been amended herein to include certain limitations of canceled claim 3 among other amendments. Applicants assert that what the Examiner refers to as a manipulation tool and articulating baseplates in Jackson does not read on either amended independent claims 1 or 19. The "tool" in Jackson does not have a wedge-shaped extension located between a top angled surface having surfaces corresponding to the angled perimeter of the first baseplate and a bottom angled surface having surfaces corresponding to the angled perimeter of the second baseplate. Further, the "baseplates" in Jackson do not have angled perimeters having three flat perimeter surfaces forming two protruding corners, a first of the flat perimeter surfaces converging with a second of the flat perimeter surfaces to form a first of the protruding corners, the first of the flat perimeter surfaces also converging with a third of the flat perimeter surfaces to form a second of the protruding corners. The combination of the structure of the baseplates and the tool of the present invention allows the tool to engage the

articulating baseplates in at least three separate surgical approach aspects as described above. On the contrary, the tool in Jackson is structured to only engage the baseplates in one direction. Moreover, there is no reason for the tool in Jackson to have angled surfaces above and below the wedge portion of the tool, because the tool in Jackson only functions to separate the hinged baseplates and not act as an inserter/impactor as is the claimed manipulation tool in the present application.

For the foregoing reasons, Applicants respectfully assert that amended claims 1 and 19 are not anticipated or obviated by Jackson. Claims 3-7, 9, 10, 12-15, and 21-24 depending from independent claim 1 and claims 25-28 depending from independent claim 19 are neither anticipated nor obviated, *inter alia*, their dependence from allowable base claims. A dependent claim is necessarily narrower than the claim from which it depends.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,
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